

THIS DOCUMENT WILL BE PUBLISHED IN THE FEDERAL REGISTER. THE EFFECTIVE DATE WILL BE ESTABLISHED BY THE DOCUMENT AS PUBLISHED IN THE FEDERAL REGISTER.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6109-N-01]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: On April 10, 2018, HUD allocated nearly \$28 billion in Community Development Block Grant disaster recovery (CDBG-DR) funds appropriated by the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018. HUD allocated \$10.03 billion for the purpose of assisting in addressing unmet needs from disasters that occurred in 2017; \$2 billion for improved electrical power systems in areas impacted by Hurricane Maria; and \$15.9 billion for mitigation activities. This notice applies only to the \$10.03 billion allocated for long-term recovery from disasters that occurred in 2017. A future notice will specify the requirements and process for the electrical power systems funding and the mitigation funds.

This \$10.03 billion allocation for addressing unmet recovery needs supplements the \$7.4 billion in CDBG-DR funds appropriated by the Supplemental Appropriations for Disaster Relief Requirements Act, 2017, which allocated funds to Texas, Florida, Puerto Rico, and the U.S. Virgin Islands in response to qualifying disasters in 2017. In HUD's **Federal Register** notice published on February 9, 2018, at 83 FR 5844 (the "Prior Notice"), HUD described those allocations, applicable waivers and alternative requirements, relevant statutory and regulatory requirements, the grant award process, criteria for action plan approval, and eligible disaster

recovery activities.

DATES: Applicability Date: **[Insert date five days after date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Acting Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 10166, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Ms. Kome at 202-708-0033. (Except for the "800" number, these telephone numbers are not toll-free). Email inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Allocations
- II. Use of Funds
- III. Overview of Grant Process
 - A. Appropriations Act (Pub. L. 115-123) Initial Action Plan Process
 - B. Prior Appropriation (Pub. L. 115-56) Substantial Action Plan Amendment Process
- IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements
 - A. Grant Administration
 - B. Housing
 - C. Infrastructure
 - D. Economic Revitalization

V. Duration of Funding

VI. Catalog of Federal Domestic Assistance

VII. Finding of No Significant Impact

Appendix A: Allocation Methodology

I. Allocations

The Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018), approved February 9, 2018 (Pub. L. 115-123) (the “Appropriations Act”), appropriated nearly \$28 billion in CDBG-DR funds. Of this amount, up to \$16 billion is available to address unmet disaster recovery needs through activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCD Act) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the “most impacted and distressed” areas (identified by HUD using the best available data) resulting from a major declared disaster that occurred in 2017. Amounts allocated for these purposes supplement \$7.4 billion in CDBG-DR funds appropriated on September 8, 2017, by the Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115-56) (the “Prior Appropriation”). HUD allocated the first \$7.4 billion in the Prior Notice. This notice amends the Prior Notice to ensure consistency across allocations for the same qualifying disasters, and to give effect to requirements of the Appropriations Act, including that funds allocated under the Prior Notice are subject to the terms and conditions applicable to CDBG-DR funds under the Appropriations Act.

Based on the remaining unmet needs allocation methodology outlined in Appendix A, this notice allocates \$10,030,484,000 for unmet disaster recovery needs under the Appropriations

Act. The allocation amounts for unmet recovery needs included in Table 1 exclude the \$2 billion set-aside for Puerto Rico and the Virgin Islands for electrical system improvements. The Appropriations Act further provided that of the nearly \$28 billion, HUD must allocate not less than \$12 billion for mitigation activities undertaken by grantees receiving an allocation of CDBG-DR funds for recovery from 2015, 2016, or 2017 disasters. On April 10, 2018, HUD announced that after addressing remaining 2017 unmet needs, HUD would allocate an additional \$3.9 billion for mitigation, bringing the amount designated for mitigation to \$15.9 billion. A subsequent notice will govern the allocations for mitigation and the allocations for electrical power system enhancements and improvements.

In accordance with the Appropriations Act, \$10,000,000 of the total amounts appropriated under the Act will be transferred to the Department's Office of Community Planning and Development (CPD), Program Office Salaries and Expenses, for necessary costs of administering and overseeing CDBG-DR funds made available under the Appropriations Act and \$15,000,000 is to be transferred to the CPD office to provide necessary capacity building and technical assistance to grantees. The Appropriations Act also provides \$10,000,000 to the Department's Office of the Inspector General for oversight of the appropriated CDBG-DR funds.

Although the Prior Notice requires each grantee to primarily consider and address its unmet housing recovery needs, grantees under this notice and the Prior Notice may also propose an allocation of funds that includes unmet economic revitalization and infrastructure needs that are unrelated to unmet housing needs after the grantee demonstrates in its needs assessment that there is no remaining unmet housing need or that the remaining unmet housing need will be addressed by other sources of funds. The law provides that grants shall be awarded directly to a State, local government, or Indian tribe at the discretion of the Secretary. To comply with

statutory direction that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD allocates funds using the best available data that cover all eligible affected areas.

Pursuant to the Appropriations Act, HUD has identified the most impacted and distressed areas based on the best available data for all eligible affected areas. A detailed explanation of HUD's allocation methodology is provided in Appendix A of this notice. For Puerto Rico and the U.S. Virgin Islands, all components of each territory are considered most impacted and distressed as defined in Table 1. For all other grantees, at least 80 percent of all allocations provided to the grantee under the Prior Notice and this notice must address unmet disaster needs within the HUD-identified most impacted and distressed areas, as identified in the last column of Table 1. These grantees may determine where to use the remaining 20 percent of their allocation, but that portion of the allocation may only be used to address unmet disaster needs in those areas that the grantee determines are "most impacted and distressed" and that received a presidential major disaster declaration pursuant to the disaster numbers listed in Table 1.

Based on further review of the impacts from the eligible disasters, and estimates of unmet need, Table 1 shows the areas and the minimum amount of funds from the combined allocations under the Appropriations Act and the Prior Appropriation that must be expended in the HUD-identified most impacted and distressed areas. For some grantees funded under the Prior Appropriation, updated data and methodology led to additional areas being defined as most impacted and distressed. Therefore, the most impacted and distressed areas identified in Table 1 of this notice amend the Prior Notice to replace the most impacted and distressed areas identified in Table 1 of the Prior Notice. The areas are listed alphabetically by county/municipio/island and

numerically by Zip Code and govern all CDBG-DR funds allocated for unmet needs from the 2017 disasters identified in Table 1.

**TABLE 1 – ALLOCATIONS FOR UNMET NEEDS UNDER
PUBLIC LAWS 115-56 AND 115-123**

Disaster No.	Grantee	Allocation under Public Law 115-56 (covered by previous Notice 83 FR 5844)	Unmet Needs Allocation under Public Law 115-123 (covered by this Notice)*	Combined allocation for unmet needs (PL 115-56 and PL 115-123)*	Minimum combined amount from PL 115-56 and PL 115-123 that must be expended for unmet needs recovery in the HUD-identified “most impacted and distressed” areas listed herein
4344 and 4353	State of California	\$0	\$124,155,000	\$124,155,000	(No less than \$99,324,000) Sonoma and Ventura counties; 93108, 94558, 95422, 95470, and 95901 Zip Codes
4337 and 4341	State of Florida	\$615,922,000	\$157,676,000	\$773,598,000	(No less than \$618,878,400) Brevard, Broward, Clay, Collier, Duval, Hillsborough, Lee, Miami-Dade, Monroe, Orange, Osceola, Palm Beach, Polk, St. Lucie, and Volusia counties; 32084, 32091, 32136, 32145, 32771, 33440, 33523, 33825, 33870, 33935, and 34266 Zip Codes.
4294, 4297, and 4338	State of Georgia	\$0	\$37,943,000	\$37,943,000	(No less than \$30,354,400) 31520, 31548, and 31705 Zip Codes
4317	State of Missouri	\$0	\$58,535,000	\$58,535,000	(No less than \$46,828,000) 63935, 63965, 64850, 65616, and 65775 Zip Codes
4336 and 4339	Commonwealth of Puerto Rico	\$1,507,179,000	\$8,220,783,000	\$9,727,962,000	(\$9,727,962,000) All components of Puerto Rico***
4332	State of Texas**	\$5,024,215,000	\$652,175,000	\$5,676,390,000	(No less than \$4,541,112,000) Aransas, Brazoria, Chambers, Fayette, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty,

					Montgomery, Newton, Nueces, Orange, Refugio, San Jacinto, San Patricio, Victoria, and Wharton counties; 75979, 77320, 77335, 77351, 77414, 77423, 77482, 77493, 77979, and 78934 Zip Codes
4335 and 4340	U.S. Virgin Islands	\$242,684,000	\$779,217,000	\$1,021,901,000	(\$1,021,901,000) All components of the U.S. Virgin Islands

*The \$2 billion required for electric grid enhancements and improvements are considered unmet needs for allocation purposes, but the allocation and use of the funds will be governed by a forthcoming notice and thus are not included in this table.

**State of Texas has also received \$57.8 million for disaster recovery in respect to Hurricane Harvey from Public Law 115-31 that is not reflected here.

***The areas defined as most impacted in HUD's formula calculation include more than 68 of Puerto Rico's 78 municipios as Most Impacted Counties and all 10 municipios that are non-Most Impacted Counties do each have a Most Impacted Zip Code. This results in nearly 100% coverage of Puerto Rico both in terms of geography and population, so for program implementation purposes, HUD has determined to include all areas of Puerto Rico as Most Impacted.

Grantees may use up to 5 percent of the total combined grant award for grant administration. Therefore, for grantees other than Puerto Rico and the U.S. Virgin Islands, HUD will include 80 percent of a grantee's expenditures for grant administration in its determination that 80 percent of the total award has been expended in the most impacted and distressed areas identified in Table 1. Additionally, for grantees other than Puerto Rico and U.S. Virgin Islands, expenditures for planning activities may be counted towards a grantee's 80 percent expenditure requirement, provided that the grantee describes in its action plan how those planning activities benefit the HUD-identified most impacted and distressed areas.

II. Use of Funds

Unless otherwise indicated, funds allocated under this notice and under the Prior Notice are subject to the requirements of this notice and the Prior Notice (as amended). This notice outlines additional requirements imposed by Public Laws 115-141 and 115-123 that apply to funds allocated under this notice and the Prior Notice. These requirements are outlined in section IV.A.1 and 2 of this notice.

The Appropriations Act requires that prior to the obligation of CDBG-DR funds by the Secretary, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds. The plan must include the criteria for eligibility, and how the use of these funds will address long-term recovery and restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas. This notice requires the grantee to submit an action plan that addresses unmet recovery needs related to the applicable disasters. Therefore, the action plan submitted in response to this notice must describe uses and activities that: (1) Are authorized under title I of the Housing and Community Development Act of 1974 (HCD Act) or allowed by a waiver or alternative requirement (see section IV below); and (2) respond to disaster-related impacts to infrastructure, housing, and economic revitalization in the most impacted and distressed areas. Additionally, grantees may include disaster related preparedness and mitigation measures as part of assisted activities as authorized pursuant to paragraph A.2.c.(4) of section VI of the Prior Notice. Grantees must conduct an assessment of community impacts and unmet needs to inform the plan and guide the development and prioritization of planned recovery activities, pursuant to paragraph A.2.a. in section VI of the Prior Notice, as amended in this notice.

An alternative requirement established by the Prior Notice authorized the U.S. Virgin Islands to administer a CDBG-DR allocation in accordance with the regulatory and statutory provisions governing the State CDBG program, as modified by applicable waivers and alternative requirements. Therefore, all references to States and State grantees in this notice and the Prior Notice include the U.S. Virgin Islands.

III. Overview Grant Process

A. Appropriations Act (Pub. L. 115-123) Initial Action Plan Process.

Grantees receiving an initial allocation under this notice for disasters occurring in 2017 (California, Georgia, and Missouri) must submit an action plan per the requirements in section VI.A.2. of the Prior Notice not later than 120 days after the applicability date of this notice. All requirements of the Prior Notice related to the action plan submission apply except the public comment period, which has been extended to no less than 30 calendar days under this notice.

Grantees must publish the action plan in a manner that affords citizens, affected local governments, and other interested parties a reasonable opportunity to examine the contents and provide feedback. The manner of publication must include, at a minimum, prominent posting on the grantee's official website for not less than 30 calendar days for public comment. These grantees must also submit the Financial Management and Grant Compliance submissions and the Pre-Award Implementation Plan per section VI.A.1 of the Prior Notice within 60 days of the applicability date of this notice.

B. Prior Appropriation (Pub. L. 115-56) Substantial Amendment Process to Incorporate Additional Funds.

Each grantee that received an allocation pursuant to the Prior Appropriation (Texas, Florida, Puerto Rico, and U.S. Virgin Islands) is required to submit a substantial amendment amending the initial action plan that was submitted in response to the Prior Notice. The substantial amendment must be submitted not later than 90 days after the initial action plan is approved in whole or in part by HUD or not later than 90 days after the applicability date of this notice, whichever comes later. The substantial amendment must include the additional allocation of funds and address the requirements of this notice. For the Commonwealth of Puerto Rico, the substantial amendment must be reviewed for consistency with the Commonwealth's 12- and 24-month economic and disaster recovery plan required by Section 21210 of P.L.115-123, the

Commonwealth's fiscal plan, and CDBG-DR eligibility. The certification of financial controls and procurement processes and the Department's determination of the adequacy of the grantee's implementation and capacity assessment pursuant to the Prior Notice, shall remain in effect for this allocation. Provided, however, that grantees shall be required to update the Financial Management and Grant Compliance submissions and the Pre-Award Implementation Plan per section VI.A.1 of the Prior Notice to reflect any material changes in the submissions.

Additionally, each grantee that received an allocation under the Prior Notice must meet the following requirements to amend the initial action plan. These steps are only applicable to the substantial amendment process to add the additional allocation under this notice.

- Grantee must consult with affected citizens, stakeholders, local governments, and public housing authorities to determine updates to its needs assessment;
- Grantee must amend its initial action plan to update its impact and needs assessment, modify or create new activities, or reprogram funds. Each amendment must be highlighted, or otherwise identified within the context of the entire action plan. The beginning of every substantial amendment must include a: (1) section that identifies exactly what content is being added, deleted, or changed; (2) chart or table that clearly illustrates where funds are coming from and where they are moving to; and (3) a revised budget allocation table that reflects all funds;
- Grantee must publish the substantial amendment to its previously approved action plan for disaster recovery in a manner that affords citizens, affected local governments, and other interested parties a reasonable opportunity to examine the amendment's contents and provide feedback. The manner of publication must include, at a minimum, prominent posting on the grantee's official website for not less than 30 calendar days for

public comment (see section VI.A.4.e of the Prior Notice for details about the website requirements);

- Grantee must respond to public comment and submit its substantial amendment to HUD no later than 90 days after the grantee's initial action plan is approved in whole or in part by HUD or not later than 90 days after the applicability date of this notice, whichever comes later. The substantial amendment submitted to HUD must also be prominently posted on the grantee's official website;
- HUD will review the substantial amendment within 45 days from date of receipt and determine whether to approve the substantial amendment per criteria identified in this notice and the Prior Notice;
- HUD will send a substantial amendment approval letter, revised grant conditions, and an amended unsigned grant agreement to the grantee. If the substantial amendment is not approved, a letter will be sent identifying its deficiencies; the grantee must then re-submit the substantial amendment within 45 days of the notification letter;
- Grantee must ensure that the HUD-approved substantial amendment and initial HUD-approved action plan are posted prominently on its official website. Each grantee's current version of its entire action plan must be accessible for viewing as a single document at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments;
- Grantee must enter the activities from its published substantial amendment into the Disaster Recovery Grant Reporting (DRGR) system and submit the updated DRGR action plan (revised to reflect the substantial amendment) to HUD within the DRGR system;

- Grantee must sign and return the grant agreement to HUD;
- HUD will sign the grant agreement and revise the grantee's CDBG-DR line of credit amount to reflect the total amount of available funds;
- Grantee may draw down CDBG-DR funds from its line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58, or adopts another Federal agency's environmental review as authorized under the Appropriations Act and the Prior Appropriation, and, as applicable, receives from HUD the Authority to Use Grant Funds (AUGF) form and certification;
- Grantee must amend and submit its projection of CDBG-DR expenditures and performance outcomes with the substantial amendment.

IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice describes rules, statutes, waivers, and alternative requirements that apply to allocations under this notice or the Prior Notice. The Secretary has determined that good cause exists for each waiver and alternative requirement established in this notice, and for the extension of waivers and alternative requirements in the Prior Notice to allocations made under this notice, and that the waivers and alternative requirements are not inconsistent with the overall purpose of the HCD Act.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Waivers and alternative requirements are effective five (5) days after they are published in the **Federal Register**.

A. Grant Administration.

1. *Applicability of waivers, alternative requirements, and other requirements.* All funds

allocated under the Prior Notice and this notice are subject to the requirements of this notice and the Prior Notice. The waivers, alternative requirements, and other provisions of the Prior Notice, as amended, are also incorporated and made applicable to funds allocated under this notice. The waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift recovery following the disasters, while also ensuring that statutory requirements under the Appropriations Act, the Prior Appropriation, as well as requirements in Public Laws 115-141 and 115-72, made applicable by the terms of the Appropriations Act and the Prior Appropriation, are met.

2. Additional requirements and modifications of requirements in the Prior Notice. The following clarifications or modifications apply to all grantees in receipt of an allocation under this notice and to funds allocated under the Prior Notice:

a. Substantial amendments for grantees receiving an allocation of funds under the Prior Notice. Grantees that received an allocation under the Prior Notice (Texas, Florida, Puerto Rico, and U.S. Virgin Islands) must submit a substantial amendment, including an updated needs assessment, per the requirements outlined in this notice, in addition to meeting the requirements for substantial amendments under the Prior Notice.

b. Action plan and other submission requirements for grantees receiving an initial allocation under this notice. Grantees that did not receive an allocation under the Prior Notice (California, Georgia, and Missouri) shall be subject to deadlines for the submission of financial controls and procurement processes, implementation plans, and action plans, as established in the Prior Notice, which shall be based upon the applicability date of this notice. Grantees that did not receive an allocation under the Prior Notice must submit an action plan not later than 120 days after the applicability date of this notice.

c. Cost or price analysis. References in the Prior Notice to “an evaluation of the cost and price of a product or service” and to the “evaluation of the cost or price of a product or service” shall be read to require “an evaluation of the cost or price of a product or service.”

d. Additional requirements for the comprehensive disaster recovery website. The Prior Notice requires all grantees to maintain a comprehensive disaster recovery website. The Appropriations Act requires that certain content be included on a CDBG-DR grantee’s website. These requirements apply to funds allocated under this notice and the Prior Notice. Each grantee must maintain on its comprehensive disaster recovery website information containing common reporting criteria established by the Department that permits individuals and entities awaiting assistance and the general public to see how all grant funds are used, including copies of all relevant procurement documents, grantee administrative contracts, and details of ongoing procurement processes, as determined by the Secretary. HUD will post guidance related to this requirement on the HUD exchange website.

e. Working capital to aid in recovery. The Appropriations Act provides that grantees may establish grant programs to assist small businesses for working capital purposes to aid in recovery with funds allocated under this notice or the Prior Notice. This proviso does not establish a new eligible activity. All funds to assist small businesses for working capital must be expended for eligible CDBG activities that meet a national objective and the other requirements applicable to the use of funds.

f. Underwriting. Notwithstanding section 105(e)(1) of the HCD Act, no funds allocated under this notice or the Prior Notice may be provided to a for-profit entity for an economic development project under section 105(a)(17) unless such project has been evaluated and selected in accordance with guidelines developed by HUD pursuant to section 105(e)(2) for

evaluating and selecting economic development projects. States and their subrecipients are required to comply with the underwriting guidelines in Appendix A to 24 CFR part 570 if they are using grant funds to provide assistance to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA. The underwriting guidelines are found at Appendix A of Part 570. https://www.ecfr.gov/cgi-bin/text-idx?SID=88dced3d630ad9fd8ab91268dd829f1e&mc=true&node=ap24.3.570_1913.a&rgn=div9

g. Limitation on use of funds for eminent domain. No funds allocated under this notice or the Prior Notice may be used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For purposes of this paragraph, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects, as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-related, and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfields Revitalization Act (P. L. 107–118) shall be considered a public use for purposes of eminent domain.

3. *Citizen participation waiver and alternative requirement.* Section VI.A.4 of the Prior Notice established citizen participation requirements for input on grantee action plans and substantial amendments. To ensure adequate citizen participation and access to action plans and substantial amendments, the Department is deleting and replacing the first paragraph in section

VI.A.4 and the entirety of section VI.A.4.a of the Prior Notice with the following to extend the minimum amount of time grantees are required to publish action plans and substantial amendments for public comment from 14 calendar days to at least 30 calendar days. These paragraphs shall apply to initial action plans and all substantial amendments submitted pursuant to this notice.

“4. *Citizen participation waiver and alternative requirement.* To permit a more streamlined process and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 1003.604, and 24 CFR 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings but do require the grantee to provide a reasonable opportunity (at least 30 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for a grant under this notice are:

a. *Publication of the action plan, opportunity for public comment, and substantial amendment criteria.* Before the grantee adopts the action plan for this grant or any substantial amendment to the action plan, the grantee will publish the proposed plan or amendment. The manner of publication must include prominent posting on the grantee’s official website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment’s contents. The topic of disaster recovery should be navigable by citizens from the grantee’s (or relevant agency’s) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations. Plan publication efforts must meet the effective communications

requirements of 24 CFR 8.6 and other fair housing and civil rights requirements, such as the effective communication requirements under the Americans with Disabilities Act.

Grantees are responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency (LEP). Each grantee must ensure that program information is available in the appropriate languages for the geographic areas to be served and take appropriate steps to ensure effective communications with persons with disabilities pursuant to 24 CFR 8.6 and other fair housing and civil rights requirements, such as the effective communication requirements under the Americans with Disabilities Act. Since State grantees under this notice may make grants throughout the State, including to entitlement communities, States should carefully evaluate the needs of persons with disabilities and those with limited English proficiency. For assistance in ensuring that this information is available to LEP populations, recipients should consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, published on January 22, 2007, in the **Federal Register** (72 FR 2732) and at: https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf

Subsequent to publication of the action plan, the grantee must provide a reasonable time frame (again, no less than 30 days) and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: a change in program benefit or eligibility criteria; the addition or deletion of an activity; or the allocation or reallocation of a monetary threshold specified by the grantee in its action plan. The

grantee may substantially amend the action plan if it follows the same procedures required in this notice for the preparation and submission of an action plan for disaster recovery.”

4. *Cost Verification.* Section VI.A.2.a of the Prior Notice established the requirements for contents of action plans submitted in response to the Prior Notice and this notice. To further strengthen the ability of grantees to demonstrate that project costs funded with CDBG-DR are necessary and reasonable, section VI.A.2.a of the Prior Notice is amended by adding a new paragraph (14) to read as follows. This requirement shall apply to the substantial amendment submitted by Puerto Rico, Texas, Florida, and the U.S. Virgin Islands pursuant to section IV.A.2.a of this notice:

“14. A description of the grantee’s controls for assuring that construction costs are reasonable and consistent with market costs at the time and place of construction. The method and degree of analysis may vary dependent upon the circumstances surrounding a particular project (e.g., project type, risk, costs), but the description must address controls for housing projects involving eight or more units (whether new construction, rehabilitation, or reconstruction), economic revitalization projects (involving, construction, rehabilitation or reconstruction), and infrastructure projects. HUD may issue guidance to grantees and may require a grantee to verify cost reasonableness from an independent and qualified third-party architect, civil engineer, or construction manager.”

5. *Additional Specific Criteria and Conditions to Mitigate Risk.* HUD is required to design an internal control plan for disaster relief funding based on standard guidance issued by the Director of the Office of Management and Budget on March 30, 2018, to address known internal control risks related to disaster funding provided under the Appropriations Act and the Prior Appropriation. Both the Appropriations Act and the Prior Appropriation also require the

Secretary to certify in advance of signing a grant agreement, that the grantee has proficient financial controls and procurement processes, and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155), ensure timely expenditure of funds, maintain comprehensive websites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. Additionally, 2 CFR 200.205 requires the Department to assess the risk of each grantee and 2 CFR 200.207(a) provides that specific conditions may be placed on the grant award based upon that assessment of risk. To ensure the effective implementation of the internal controls discussed above, the Department is adding a new paragraph VI.A.32 to the Prior Notice. This paragraph will also apply to funds provided under this notice as well as the Prior Notice:

“32. Additional Criteria and Specific Conditions to Mitigate Risk. To ensure the effective implementation of the internal control plan required under the Appropriations Act and grantee implementation of the financial controls, procurement processes, and other procedures that are the subject of the certification by the Secretary, the Department has and may continue to establish specific criteria and conditions for each grant award as provided for at 2 CFR 200.205 and 200.207(a), respectively, to mitigate the risk of the grant. The Secretary shall specify any such criteria and the resulting conditions in the grant conditions governing the award. These criteria may include, but need not be limited to, a consideration of the internal control framework established by the grantee to ensure compliant implementation of its financial controls, procurement processes and payment of funds to eligible entities, as well as the grantee’s risk management strategy for information technology systems established to implement CDBG-DR funded programs. Additionally, the Secretary may amend the grant conditions to mitigate risk of

a grant award at any point at which the Secretary determines a condition to be required to protect the Federal financial interest or to advance recovery.”

6. *Clarification of Waiver of Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).* The Prior Notice established a waiver associated with Section 414 of the Stafford Act for homeowner occupants and tenants displaced because of the disaster. The waiver is applicable to “CDBG-DR funded projects commencing more than one year after the date of the Presidentially declared disaster.” The Department is amending this provision to clarify the point at which a project is determined to have “commenced,” by amending paragraph VI.A.23.f of the Prior Notice by replacing it in its entirety with the following:

“f. *Waiver of Section 414 of the Stafford Act.* Section 414 of the Stafford Act (42 U.S.C. 5181) provides that “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) [42 U.S.C. 4601 et seq.] [“URA”] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA].” Accordingly, homeowner occupants and tenants displaced from their homes as a result of the identified disasters and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA. Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to real property acquisition, rehabilitation or demolition of real property for a CDBG– DR funded project commencing more than one year after the date of the latest applicable Presidentially declared disaster undertaken by the grantees, or subrecipients, provided that the project was not planned, approved,

or otherwise underway prior to the disaster. For purposes of this paragraph, a CDBG-DR funded project shall be determined to have commenced on the earliest of: 1) the date of an approved Request for Release of Funds and certification, or 2) the date of completion of the site-specific review when a program utilizes Tiering, or 3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12). The Department has surveyed other Federal agencies' interpretation and implementation of Section 414 and found varying views and strategies for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. The Secretary has the authority to waive provisions of the Stafford Act and its implementing regulations that the Secretary administers in connection with the obligation of funds made available by this notice, or the grantees' use of these funds. The Department has determined that good cause exists for a waiver and that such waiver is not inconsistent with the overall purposes of title I of the HCD Act.

(1) The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster considering most of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence.

(2) This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver."

7. Clarification of the Environmental Review requirements. The Prior Notice provided guidance on the adoption of another Federal agency's environmental review for CDBG-DR projects as permitted by the Prior Appropriation. The Appropriations Act goes beyond the Prior Appropriation and authorizes recipients of CDBG-DR funds under the Appropriations Act that use such funds to supplement Federal assistance provided under section 408(c)(4) of the Stafford

Act to adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency to satisfy responsibilities with respect to environmental review, approval or permit. Accordingly, the Department is amending paragraph VI.A.24.b of the Prior Notice by replacing it in its entirety with the following:

“b. *Adoption of another agency’s environmental review.* In accordance with the Appropriations Act, grant recipients of Federal funds that use such funds to supplement Federal assistance provided under section 408(c)(4) as well as sections 402, 403, 404, 406, 407 or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the HCD Act. The grant recipient must notify HUD in writing of its decision to adopt another agency’s environmental review. The grant recipient must retain a copy of the review in the grantee’s environmental records.”

8. *Low- and moderate-income national objective standard (Commonwealth of Puerto Rico only).* Section 102(a)(20) of the HCD Act defines “persons of low and moderate income” and “low- and moderate income persons.” Subparagraph (B) of this definition authorizes the Secretary to establish for any area percentages of median income that are higher or lower than the percentages defined as “low- and moderate-income” under 102(a)(20)(A), if the Secretary finds such variations to be necessary because of unusually high or low family incomes in such areas. Due to the unusually low incomes in Puerto Rico, residents that meet the CDBG program definition of “low- and moderate-income” by having incomes of 80 percent AMI or less, also remain below the Federal poverty level. Therefore, the Department is increasing the income limits for low- and moderate-income persons in Puerto Rico, which will be listed in income

tables posted on the HUD Exchange website. Under this adjustment, Puerto Rico may use these alternative income limits when determining that activities undertaken with CDBG-DR funds meet the low- and moderate-income benefit CDBG national objective criteria. These income limits apply only to the use of CDBG-DR funds under this notice and the Prior Notice.

B. Housing

9. *Modification of Affordability Periods.* The Prior Notice imposed a twenty-year (20-year) affordability period for all rental properties assisted with CDBG-DR funds under the Prior Appropriation. The Department, however, is amending this requirement to apply the affordability requirements to rental projects as defined below. The Department is amending paragraph VI.B.34 of the Prior Notice by replacing it in its entirety with the following:

“34. *Addressing Unmet Affordable Rental Housing Needs.* The grantee must identify in its action plan how it will address the rehabilitation, reconstruction, replacement, and new construction of rental housing that is affordable to low- and moderate-income households in the most impacted and distressed areas and ensure that adequate funding from all available sources, including CDBG-DR grant funds, are dedicated to addressing the unmet needs identified in its action plan pursuant to paragraph A.2.a.(3) of section VI of this notice. To meet the low- and moderate-income housing national objective, affordable rental housing funded under this notice must be rented to a low- and moderate-income person at affordable rents. This notice requires grantees to impose the following minimum affordability periods enforced with recorded use restrictions, covenants, deed restrictions, or other mechanisms to ensure that rental housing remains affordable for the required period of time:

Rental housing activity	Minimum period of affordability
Rehabilitation or reconstruction of multi-family rental projects with eight or more units	15 years
New construction multi-family rental projects with five or more units	20 years

The action plan must, at a minimum, provide (1) a definition of “affordable rents”; (2) the income limits for tenants of rental housing that is rehabilitated, reconstructed or constructed with CDBG-DR funds; and (3) a minimum affordability period of fifteen (15) years for the rehabilitation or reconstruction of multi-family rental projects with eight or more units, and a minimum affordability period of twenty (20) years for the new construction of multi-family rental units with five or more units. If a rental project that requires rehabilitation or reconstruction is subject to existing affordability requirements associated with other funding sources, grantees may provide in their action plan that the 15-year affordability period required under this notice may run concurrently (or overlap) with the affordability requirements associated with such other funding.

10. Affordability Period for New Construction of Single-Family LMI Homeowner Housing. Grantees receiving funds under this notice are required to implement a minimum five-year affordability period on all newly constructed single-family housing that is to be made available for low- and moderate-income homeownership. This requirement for an affordability period does not apply to the rehabilitation or reconstruction of single-family housing. This notice requires grantees to develop and impose affordability (i.e., resale and recapture) restrictions for single-family housing newly constructed with CDBG-DR funds and made available for affordable homeownership to low- and moderate-income persons, and to enforce those restrictions through recorded deed restrictions, covenants, or other similar mechanisms, for

a period not less than five years. Grantees shall establish resale or recapture requirements for housing funded pursuant to this paragraph and shall outline those requirements in the action plan or substantial amendment in which the activity is proposed. The resale and recapture provisions must clearly describe the terms of the resale and recapture provisions, the specific circumstances under which these provisions will be used, and how the provisions will be enforced.

11. *CDBG-DR Housing Assistance and FEMA's Permanent and Semi-Permanent Housing Programs.* The Prior Appropriation and the Appropriations Act prohibit the use of CDBG-DR funds for activities that are reimbursable by FEMA and the U.S. Army Corps of Engineers. In addition, paragraph VI.A.25 of the Prior Notice requires grantees to ensure that CDBG-DR funds are not used to duplicate funding provided by these agencies or any other potential sources of assistance. As with all sources of FEMA assistance, grantees are reminded that in jurisdictions in which FEMA has implemented its Permanent or Semi-Permanent Housing program, grantees must ensure that CDBG-DR funds are not used in violation of the above two prohibitions. Grantees must also establish policies and procedures to provide for the repayment of a CDBG-DR award when assistance is subsequently provided for that same purpose from FEMA or other sources.

12. *Rehabilitation and Reconstruction Cost-Effectiveness.* In its **Federal Register** notice allocating additional CDBG-DR funds for Louisiana floods and 2016 disasters (82 FR 5591), the Department required grantees receiving funds under that notice to consider cost-effectiveness of residential rehabilitation or reconstruction projects relative to other alternatives. In this notice, the Department is similarly requiring each grantee to establish policies and procedures to assess the cost-effectiveness of each proposed project undertaken to assist a household under any residential rehabilitation or reconstruction program funded under this notice or the Prior Notice.

The policies and procedures must address criteria for determining when the cost of the rehabilitation or reconstruction of the unit will not be cost-effective relative to other means of assisting the property-owner, such as buyout or acquisition of the property, or the construction of area-wide protective infrastructure, rather than individual building mitigation solutions designed to protect individual structures (such as elevating an existing structure). For example, as the grantee in designing its program, it might choose as comparison criteria the rehabilitation costs derived from the RS Means Residential Cost Data and costs to buyout or acquire the property as a means of determining whether to fund a rehabilitation project. A grantee may also consider offering different housing alternatives, as appropriate, such as manufactured housing options. A grantee may find it necessary to provide exceptions on a case-by-case basis to the maximum amount of assistance or cost effectiveness criteria and must describe the process it will use to make such exceptions in its policies and procedures. Each grantee must adopt policies and procedures that communicate how it will analyze the circumstances under which an exception is needed, how it will demonstrate that the amount of assistance is necessary and reasonable, and how the grantee will make reasonable accommodations to provide accessibility features necessary to accommodate an occupant with a disability. All CDBG-DR expenditures remain subject to the cost principles in 2 CFR part 200, Subpart E – Cost Principles, including the requirement that costs be necessary and reasonable for the performance of the grantee's CDBG-DR grant.

C. Infrastructure

13. *Infrastructure planning and design.* CDBG-DR allocations provided for under this notice are informed in part by the Department's assessment of unmet infrastructure needs and accordingly, the Department is establishing infrastructure planning and design requirements for

grantees subject to the provisions of this notice and the Prior Notice. For funds allocated pursuant to the Prior Notice and this notice, the Department is requiring grantees to address long-term recovery and hazard mitigation planning in the action plan or substantial amendment, whichever is applicable under this notice. Each grantee must include a description of how the grantee plans to:

a. Promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account future possible extreme weather events and other natural hazards and long-term risks;

b. Adhere to the elevation requirements established in paragraph B.32.e of section VI of the Prior Notice;

c. Coordinate with local and regional planning efforts to ensure consistency, including how the grantee will promote community-level and/or regional (e.g., multiple local jurisdictions) post-disaster recovery and mitigation planning;

d. For infrastructure allocations, the grantee must also describe:

i. How mitigation measures will be integrated into rebuilding activities and the extent to which infrastructure activities funded through this grant will achieve objectives outlined in regionally or locally established plans and policies that are designed to reduce future risk to the jurisdiction;

ii. How infrastructure activities will be informed by a consideration of the costs and benefits of the project;

iii. How the grantee will seek to ensure that infrastructure activities will avoid disproportionate impact on vulnerable populations as referenced in paragraph A.2.a(4) of

section VI in the Prior Notice and create opportunities to address economic inequities facing local communities;

iv. How the grantee will align investments with other planned state or local capital improvements and infrastructure development efforts, and will work to foster the potential for additional infrastructure funding from multiple sources, including existing state and local capital improvement projects in planning, and the potential for private investment; and

v. The extent to which the grantee will employ adaptable and reliable technologies to guard against premature obsolescence of infrastructure.

Grantees are encouraged to review the additional guidance on predevelopment principles are described in the Federal Resource Guide for Infrastructure Planning and Design:

(<http://portal.hud.gov/hudportal/documents/huddoc?id=BAInfraResGuideMay2015.pdf>)

14. *Discipline and Accountability in the Environmental Review and Permitting of Infrastructure Projects.* Executive Order 13807, signed by the President on August 15, 2017, establishes a coordinated, predictable, and transparent process for the review and permitting of infrastructure projects. In addition, the Federal Permitting Improvement Steering Council has issued a standard operating procedure to coordinate Federal agency reporting on the environmental review and permitting of covered projects pursuant to the Fixing America's Surface Transportation Act (FAST-41) (P.L. 114-94). Under FAST-41, a covered project is defined as any activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure for renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, or any other sector as determined

by a majority vote of the Council that (1) is subject to National Environmental Policy Act of 1969 (NEPA); is likely to require a total investment of more than \$200,000,000; and does not qualify for abbreviated authorization or environmental review processes under any applicable law; or (2) is subject to NEPA and the size and complexity of which, in the opinion of the Council, make the project likely to benefit from enhanced oversight and coordination, including a project likely to require authorization from or environmental review involving more than two Federal agencies; or the preparation of an environmental impact statement under NEPA. CDBG-DR grantees may choose to participate in reporting on their environmental review and permitting of covered projects under FAST-41.

15. *CDBG-DR Funds as Match for FEMA 428 Public Assistance Projects.* In response to a disaster, FEMA may implement, and grantees may elect to follow alternative procedures for FEMA's Public Assistance Program, as authorized pursuant to Section 428 of the Stafford Act. Grantees may use CDBG-DR funds as a matching requirement, share, or contribution for Public Assistance Projects financed pursuant to Section 428, but as in other instances in which grantee use CDBG-DR funds to meet local matching requirements, grantees must document that CDBG-DR funds have been used for the actual costs incurred for the assisted project and for costs that are eligible, meet a national objective, and meet other applicable CDBG requirements.

D. Economic Revitalization

16. *Waiver to permit tourism marketing (U.S. Virgin Islands only).* The U.S. Virgin Islands has requested a waiver to allow the Territory to use up to \$5,000,000 in CDBG-DR funds to promote travel to disaster-impacted areas. Tourism is the primary economic contributor to the U.S. Virgin Island's economy, estimated to account for between 30 and 80 percent of the Territory's economy. The U.S. Virgin Islands indicated that for several weeks following the

disasters, airports and seaports remained closed and due to damage to hotels and a perception that the islands have been completely decimated, tourism has remained low. The Territory indicates that many of its largest hotels will not reopen until late 2019 or 2020, with weekly accommodation capacity dropping from 23,000 in February 2017 to 13,000 in February 2018. The Territory's request also notes that the decline in tourism has had a particularly adverse impact on low- and moderate-income residents that depend on the industry for employment.

The Territory has documented a sharp decline in visitors to the islands, with a corresponding decline in visitor spending and Territory revenues. Prior to the disasters, the Territory reported total monthly visitor expenditures of \$84.8 million in October 2016, contrasted to total tourist spending of \$49.8 million and lost excursionist spending of \$71.1 million in October 2017, after the storms. The Territory estimates that total tourism-related losses caused by the 2017 disasters are expected to approach \$1 billion in the 12 months following the storms, amounting to almost 70% of the total revenue generated by tourism in 2016.

Tourism industry support, such as a national and international consumer awareness advertising campaign for an area in general, is ineligible for CDBG assistance. However, HUD recognizes that such support can be a useful recovery tool in a damaged regional economy that depends on tourism for most of its jobs and tax revenues. In the past, HUD has granted tourism waivers for several CDBG-DR disaster recovery efforts. As the U.S. Virgin Islands is proposing advertising and marketing activities rather than direct assistance to tourism-dependent businesses, and because the measures of long-term benefit from the proposed activities must be derived using indirect means, 42 U.S.C. 5305(a) is waived only to the extent necessary to make eligible use of no more than \$5,000,000 for assistance to promote the Territory in general or

specific components of the islands. Additionally, no elected officials shall appear in tourism marketing materials financed with CDBG-DR funds. Given the importance of tourism to the overall economy, HUD is authorizing this use of funds without regard to unmet housing need. This waiver will expire two years after the Territory first draws CDBG-DR funds under the allocation provided in the Prior Notice. In providing similar waivers for other CDBG-DR grantees, the Department has often identified issues in the procurement of tourism marketing services, with grantees adding CDBG-DR funds to existing tourism marketing contracts procured with other sources of funds. In providing this waiver, HUD advises the Territory to ensure that contracts funded pursuant to this waiver with CDBG-DR funds comply with applicable procurement requirements. The grantee must also develop metrics to demonstrate the impact of CDBG-DR expenditures on the tourism sector of the economy and shall identify those metrics in the initial substantial amendment submitted pursuant to this notice.

17. *Waiver to permit tourism and business marketing (Commonwealth of Puerto Rico only).* The Commonwealth of Puerto Rico has requested a waiver to allow the Commonwealth to use up to \$15,000,000 in CDBG-DR funds to promote travel and to attract new businesses to disaster-impacted areas. Puerto Rico's request indicated that prior to the storms, tourism accounted for 8 percent of the economy. One month after the disasters, however, one third of the island's hotels remained shuttered and beaches remained closed for swimming due to possible water contamination. The Commonwealth's request notes that insular areas of the island have been particularly slow to recover to historic levels of tourism activity. Puerto Rico anticipates the addition of over 2,000 tourist accommodations this year and accordingly, seeks to use CDBG-DR funds to target outreach efforts through a marketing campaign to reach potential visitors that may not be aware of the pace of recovery in the island's tourist areas.

The Commonwealth's waiver request includes the proposed use of CDBG-DR funds to also market the island to new businesses. Puerto Rico notes that its declining economic conditions prior to the storms, as reflected through the largest-ever federal bankruptcy by a local government, were exacerbated by the disasters. The top five economic sectors with reported losses to the U.S. Small Business Administration as result of the storms include real estate, accommodations and food services, health care, retail trade, and manufacturing. Unemployment in February 2016 was reported at 10.6%, with a decline in jobs in non-farm industries from 871,200 jobs in September 2017 to 848,300 jobs in February 2018. The Commonwealth's request notes that the unprecedented federal investment in the island's damaged housing stock and infrastructure also presents an opportunity to introduce and re-introduce businesses across the nation and around the world to Puerto Rico as an attractive location for new business investment.

Tourism and business advertising campaigns for an area in general, are ineligible for CDBG-DR assistance. However, HUD recognizes that such support can be a useful recovery tool in a damaged regional economy that depends on tourism and seeks to attract new business investment to generate new jobs and tax revenues. HUD has previously granted similar waivers for several CDBG-DR disaster recovery efforts. As the Commonwealth of Puerto Rico is proposing advertising and marketing activities rather than direct assistance to tourism-dependent and other businesses, and because the measures of long-term benefit from the proposed activities must be derived using indirect means, 42 U.S.C. 5305(a) is waived only to the extent necessary to make eligible use of no more than \$15,000,000 for assistance to promote the Commonwealth in general or specific communities. No elected officials shall appear in tourism or business marketing materials financed with CDBG-DR funds. Given the importance of tourism to the

overall economy, HUD is authorizing this use of funds without regard to unmet housing need. This waiver will expire two years after the Commonwealth first draws CDBG-DR funds under the allocation provided in the Prior Notice. In providing similar waivers for other CDBG-DR grantees, the Department has often identified issues in the procurement of tourism and business marketing services, with grantees adding CDBG-DR funds to existing tourism and business marketing contracts procured with other sources of funds. In providing this waiver, HUD advises the Commonwealth to ensure that contracts funded pursuant to this waiver with CDBG-DR funds comply with applicable procurement requirements. The grantee must also develop metrics to demonstrate the impact of CDBG-DR expenditures on the tourism and other sectors of the economy and shall identify those metrics in the initial substantial amendment submitted pursuant to this notice.

V. Duration of Funding

The law, as amended, requires that funds provided under the Appropriations Act and Prior Appropriation be expended within two years of the date that HUD obligates funds to a grantee, but also authorizes the Office of Management and Budget (OMB) to provide a waiver of this requirement. OMB has waived this requirement for a combined total of \$35,390,000,000 of CDBG-DR funds appropriated under the Prior Appropriation and the Appropriations Act. Notwithstanding the OMB waiver, however, the provision of the Prior Notice that requires each grantee to expend 100 percent of its total allocation of CDBG-DR funds on eligible activities within six years of HUD's initial obligation of funds remains in effect. For grantees receiving an allocation of funds under the Prior Notice, the six-year expenditure deadline commences with initial obligation of funds provided under the Prior Notice. For grantees receiving an initial allocation of funds under this Notice, the six-year expenditure deadline commences with the

initial obligation of funds provided under this notice. Further, consistent with 31 U.S.C. 1555 and OMB Circular No. A-11, if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for two consecutive fiscal years, any remaining unobligated balance will be made unavailable for obligation or expenditure.

VI. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.228 for State CDBG grantees.

VII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The

FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Dated: AUG - 8 2018



Neal J. Rackleff
Assistant Secretary

[FR-6109-N-01]

Appendix A – Detailed Methodology (for Federal Notice Appendix)

Allocation of CDBG-DR Funds to Most Impacted and Distressed Areas Due to 2017 Federally Declared Disasters and Allocation of Mitigation Funds for 2015, 2016, and 2017 Federally Declared Disasters

Background

The Bipartisan Budget Act of 2018, Public Law 115-123, enacted on February 9, 2018, appropriated \$28,000,000,000 through the Community Development Block Grant disaster recovery (CDBG-DR) program. The statutory text related to the allocation is as follows:

For an additional amount for “Community Development Fund”, \$28,000,000,000, to remain available until expended, for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the most impacted and distressed areas resulting from a major declared disaster that occurred in 2017 (except as otherwise provided under this heading) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.): *Provided*, That funds shall be awarded directly to the State, unit of general local government, or Indian tribe (as such term is defined in section 102 of the Housing and Community Development Act of 1974) at the discretion of the Secretary: *Provided further*, That of the amounts made available under this heading, up to \$16,000,000,000 shall be allocated to meet unmet needs for grantees that have received or will receive allocations under this heading for major declared disasters that occurred in 2017 or under the same heading of Division B of Public Law 115–56, except that, of the amounts made available under this proviso, no less than \$11,000,000,000 shall be allocated to the States and units of local government affected by Hurricane Maria, and of such amounts allocated to such grantees affected by Hurricane Maria, \$2,000,000,000 shall be used to provide enhanced or improved electrical power systems: *Provided further*, That to the extent amounts under the previous proviso are insufficient to meet all unmet needs, the allocation amounts related to infrastructure shall be reduced proportionally based on the total infrastructure needs of all grantees: *Provided further*, That of the amounts made available under this heading, no less than \$12,000,000,000 shall be allocated for mitigation activities to all grantees of funding provided under this heading, section 420 of division L of Public Law 114–113, section 145 of division C of Public Law 114–223, section 192 of division C of Public Law 114–223 (as added by section 101(3) of division A of Public Law 114–254), section 421 of division K of Public Law 115–31, and the same heading in division B of Public Law 115–56, and that such mitigation activities shall be subject to the same terms and conditions under this subdivision, as determined by the Secretary: *Provided further*, That all such grantees shall receive an allocation of funds under the preceding proviso in the same proportion that the amount of funds each grantee received or will receive under the second proviso of this heading or the headings and sections specified in the previous proviso bears to the amount of all funds provided to all grantees specified in the previous proviso: *Provided further*, That of the amounts made available under the second and fourth provisos of this heading, the Secretary shall allocate to all such grantees an aggregate amount not less than 33 percent of each such amounts of funds provided under this heading within 60 days after the enactment of this subdivision based on the best available data (especially with respect to data for all such grantees affected by Hurricanes Harvey, Irma, and Maria), and shall allocate no less than 100 percent of the funds provided under this heading by no later than December 1, 2018:

... *Provided further*, That of the amounts made available under this heading, up to \$15,000,000 shall be made available for capacity building and technical assistance, including assistance on contracting and procurement processes, to support States, units of general local government, or Indian tribes (and their subrecipients) that receive allocations pursuant to this heading, received disaster recovery allocations under the same heading in Public Law 115–56, or may receive similar allocations for disaster recovery in future appropriations Acts: *Provided further*, That of the amounts made available under this heading, up to \$10,000,000 shall be transferred, in aggregate, to “Department of Housing and Urban Development—Program Office Salaries and Expenses—Community Planning and Development” for necessary costs, including information technology costs, of administering and overseeing the obligation and expenditure of amounts under this heading:

Further, under the General Provisions of the Act in Section 21102:

Any funds made available under the heading “Community Development Fund” under this subdivision that remain available, after the other funds under such heading have been allocated for necessary expenses for activities authorized under such heading, shall be used for additional mitigation activities in the most impacted and distressed areas resulting from a major declared disaster that occurred in 2014, 2015, 2016 or 2017: *Provided*, That such remaining funds shall be awarded to grantees of funding provided for disaster relief under the heading “Community Development Fund” in this subdivision, section 420 of division L of Public Law 114–113, section 145 of division C of Public Law 114–223, section 192 of division C of Public Law 114–223 (as added by section 101(3) of division A of Public Law 114–254), section 421 of division K of Public Law 115–31, and the same heading in division B of Public Law 115–56 subject to the same terms and conditions under this subdivision and such Acts respectively: *Provided further*, That each such grantee shall receive an allocation from such remaining funds in the same proportion that the amount of funds such grantee received under this subdivision and under the Acts specified in the previous proviso bears to the amount of all funds provided to all grantees specified in the previous proviso.

The methodology for allocating these funds has two core parts:

- *Unmet Needs*: Up to \$16 billion for the remaining unmet needs of communities most impacted by a disaster in 2017. After factoring in the \$35 million set-aside for HUD expenses, up to \$15.965 billion is available for unmet needs, of which no less than \$11 billion is provided to communities impacted by Hurricane Maria, specifically the Commonwealth of Puerto Rico and United States Virgin Islands. These funds are allocated based on a calculation of unmet needs as described below after taking into account the \$7.458 billion of CDBG-DR previously allocated for 2017 disasters.
- *Mitigation*: No less than \$12 billion for mitigation activities for grantees who have received CDBG-DR funding under this appropriation or earlier appropriations covering disasters in 2015, 2016, and 2017. This allocation is based on each grantee’s proportional share of total funds allocated for all of the eligible disasters.

Allocating for remaining unmet needs of 2017

Most impacted and distressed areas

As with prior CDBG-DR appropriations, HUD is not obligated to allocate funds for all major disasters declared in 2017. HUD is directed to use the funds “in the most impacted and distressed areas.” HUD has implemented this directive by limiting CDBG-DR formula allocations to jurisdictions with major disasters that meet three standards:

- (1) Individual Assistance/IHP designation. HUD has limited allocations to those disasters where FEMA had determined the damage was sufficient to declare the disaster as eligible to receive Individual and Households Program (IHP) funding.
- (2) Concentrated damage. HUD has limited its estimate of serious unmet housing need to counties and Zip Codes with high levels of damage, collectively referred to as “most impacted areas”. For this allocation, HUD is defining most impacted areas as either most impacted counties - counties exceeding \$10 million in serious unmet housing needs - and most impacted Zip Codes – Zip Codes with \$2 million or more of serious unmet housing needs. The calculation of serious unmet housing needs is described below.
- (3) Disasters meeting the most impacted threshold. Only 2017 disasters that meet this requirement for most impacted damage are funded:
 - a. One or more most impacted county
 - b. An aggregate of most impacted Zip Codes of \$10 million or greater

For disasters that meet the most impacted threshold described above, the unmet need allocations are based on the following factors summed together less previous CDBG-DR allocations for the 2017 disasters unmet needs:

- (1) Repair estimates for seriously damaged owner-occupied units without insurance (with some exceptions) in most impacted areas after FEMA and SBA repair grants or loans;
- (2) Repair estimates for seriously damaged rental units occupied by renters with income less than 50 percent of Area Median Income in most impacted areas;
- (3) Repair and content loss estimates for small businesses with serious damage denied by SBA;
- (4) The estimated local cost share for Public Assistance Category C to G projects;
- (5) \$2 billion for Maria-impacted disasters for improvements to the electric grid; and
- (6) An amount to ensure that Maria impacted disasters do not receive less than \$11 billion from Public Law 115-123, with the split between the eligible disasters in Puerto Rico and the Virgin Islands based on their relative share of needs as calculated under number 1 to 5 above.

Methods for estimating unmet needs for housing

The data HUD staff have identified as being available to calculate unmet needs for qualifying disasters come from the FEMA Individual Assistance program data on housing-unit damage as of February 22, 2018.

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA's Individual Assistance program. HUD calculates "unmet housing needs" as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA and SBA. Puerto Rico and the Virgin Island owner damage is calculated based on both real property and personal property inspections based on findings by HUD that this likely is a more accurate estimate of serious homeowner damage in those areas. For the continental U.S., HUD finds its traditional approach of just using real property damage assessments for owner-occupied units continues to be effective.

Each of the FEMA inspected owner units are categorized by HUD into one of five categories:

- Minor-Low: Less than \$3,000 of FEMA inspected real property damage.
- Minor-High: \$3,000 to \$7,999 of FEMA inspected real property damage.
- Major-Low: \$8,000 to \$14,999 of FEMA inspected real property damage and/or 1 to 4 feet of flooding on the first floor.
- Major-High: \$15,000 to \$28,800 of FEMA inspected real property damage and/or 4 to 6 feet of flooding on the first floor.
- Severe: Greater than \$28,800 of FEMA inspected real property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

For the Virgin Islands and Puerto Rico, the damage grouping would be the higher damage categorization based on the calculation above or:

- Minor-Low: Less than \$2,500 of FEMA inspected personal property damage.
- Minor-High: \$2,500 to \$3,499 of FEMA inspected personal property damage.
- Major-Low: \$3,500 to \$4,999 of FEMA inspected personal property damage or 1 to 4 feet of flooding on the first floor.
- Major-High: \$5,000 to \$8,999 of FEMA inspected personal property damage or 4 to 6 feet of flooding on the first floor.
- Severe: Greater than \$9,000 of FEMA inspected personal property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

To meet the statutory requirement of "most impacted" in this legislative language, homes are determined to have a high level of damage if they have damage of "major-low" or higher. That is, they have a real property FEMA inspected damage of \$8,000 or flooding over 1 foot.

Furthermore, a homeowner is determined to have unmet needs if they reported damage and no insurance to cover that damage and was outside the 1% risk flood hazard area; for homeowners inside the flood hazard area, only homeowners without insurance below 120% of Area Median Income are determined to have unmet needs. Homeowners without hazard insurance with non-flood damage with incomes below the greater of national median or 120% of Area Median Income are included as having unmet needs.

FEMA does not inspect rental units for real property damage so personal property damage is used as a proxy for unit damage. Each of the FEMA inspected renter units are categorized by HUD into one of five categories:

- Minor-Low: Less than \$1,000 of FEMA inspected personal property damage.
- Minor-High: \$1,000 to \$1,999 of FEMA inspected personal property damage.
- Major-Low: \$2,000 to \$3,499 of FEMA inspected personal property damage or 1 to 4 feet of flooding on the first floor.
- Major-High: \$3,500 to \$7,499 of FEMA inspected personal property damage or 4 to 6 feet of flooding on the first floor.
- Severe: Greater than \$7,500 of FEMA inspected personal property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

For rental properties, to meet the statutory requirement of “most impacted” in this legislative language, homes are determined to have a high level of damage if they have damage of “major-low” or higher. That is, they have a FEMA personal property damage assessment of \$2,000 or greater or flooding over 1 foot.

Furthermore, landlords are presumed to have adequate insurance coverage unless the unit is occupied by a renter with income less than the greater of the Federal poverty level or 50 percent of Area Median Income. Units occupied by a tenant with income less than the greater of the Federal poverty level or 50 percent of Area Median Income are used to calculate likely unmet needs for affordable rental housing.

The average cost to fully repair a home for a specific disaster to code within each of the damage categories noted above is calculated using the median real property damage repair costs determined by the Small Business Administration for its disaster loan program for the subset of homes inspected by both SBA and FEMA for each eligible disaster. Because SBA is inspecting for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally more than the FEMA estimates on the cost to make the home habitable.

For each household determined to have unmet housing needs (as described above), their estimated average unmet housing need less assistance from FEMA and SBA provided for repair to homes with serious unmet needs. No unmet housing need cost multiplier can be less than the 25th percentile estimate across all disasters of 2017. Those minimum cost multipliers are: \$40,323 for major damage (low); \$55,812 for major damage (high); and \$77,252 for severe damage. The multipliers used for each disaster is shown below.

	Serious Unmet Housing Need Multipliers		
	Major-Low	Major-High	Severe
California	\$40,323	\$55,812	\$124,481
Florida	\$42,837	\$56,113	\$79,096
Georgia	\$40,323	\$55,812	\$77,252
Missouri	\$40,323	\$66,545	\$100,947
Puerto Rico	\$40,323	\$55,812	\$77,252
Texas	\$56,342	\$75,414	\$101,390

Virgin Islands	\$80,142	\$97,672	\$116,351
----------------	----------	----------	-----------

Methods for estimating unmet economic revitalization needs

Based on SBA disaster loans to businesses as of 3-22-2018, HUD calculates the median real estate and content loss by the following damage categories for each state:

- Category 1: real estate + content loss = below 12,000
- Category 2: real estate + content loss = 12,000–30,000
- Category 3: real estate + content loss = 30,000–65,000
- Category 4: real estate + content loss = 65,000–150,000
- Category 5: real estate + content loss = above 150,000

For properties with real estate and content loss of \$30,000 or more, HUD calculates the estimated amount of unmet needs for small businesses by multiplying the median damage estimates for the categories above by the number of small businesses denied an SBA loan, including those denied a loan prior to inspection due to inadequate credit or income (or a decision had not been made), under the assumption that damage among those denied at pre-inspection have the same distribution of damage as those denied after inspection.

Methods for estimating unmet infrastructure needs

To calculate unmet needs for infrastructure projects, HUD is using data obtained from FEMA as of March 30, 2018, showing the amount FEMA estimates will be needed to repair the permanent public infrastructure (Categories C to G) to their pre-storm condition. HUD uses these data to calculate two infrastructure unmet needs:

- The estimated local cost share for Public Assistance Category C to G projects.
- An allocation of \$2 billion for Maria affected disasters (Puerto Rico and the Virgin Islands) for “enhanced or improved electrical power systems.” This is allocated between Puerto Rico and the Virgin Islands based on their relative share of total estimated Category F Public Assistance cost to repair public utilities.

Allocation Calculation

Once eligible entities are identified using the above criteria, the allocation to individual grantees represents their proportional share of the estimated unmet needs. For the formula allocation, HUD calculates total serious unmet recovery needs as the aggregate of:

- Serious unmet housing needs in most impacted counties less amounts of CDBG-DR previously allocated for serious unmet housing needs
- Serious unmet business needs less amounts of CDBG-DR previously allocated for serious business needs

- FEMA Public Assistance Category C to G local cost share and the \$2 billion additional amount for enhanced or improved electrical power systems in Puerto Rico and the Virgin Islands

Prior allocations for 2017 disasters are subtracted from this amount. Because this results in less than \$11 billion being allocated to Maria affected disasters (Puerto Rico and the Virgin Islands) from Public Law 115-123, an additional amount is added to those two grantees to reach \$11 billion based on their relative share of needs as calculated under the three bullets above.

This results in an estimate of unmet needs to be allocated from Public Law 115-123 of \$12.031 billion, allowing \$3.935 billion to be allocated to mitigation.

Allocating for mitigation

The allocation of \$15.935 billion in mitigation funds (the \$12 billion appropriated for mitigation plus the \$3.935 billion remaining after allocation of 100% of unmet needs) is allocated proportionally based on each grantee's relative share of the \$22.425 billion of CDBG-DR funds allocated for unmet needs to disasters occurring in 2015, 2016, and 2017. For example, the combination of all grants to Puerto Rico for unmet needs represents 52 percent of the \$22.425 billion allocated for unmet needs. As a result, Puerto Rico receives 52 percent of the \$15.935 billion made available for mitigation funding.